

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

ROMEAL PRICE,
Defendant

:
:
:
: Case 1:00-CR-0063-2
: 1:00-CR-0216-0
:
:

TRANSCRIPT OF PROCEEDINGS
SENTENCING

FILED
HARRISBURG, PA

OCT 24 2006

MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: February 2, 2001

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:

ERIC PFISTERER, Assistant United States Attorney
For - Plaintiff

BRIAN W. PERRY, Esquire
For - Defendant

Vicki L. Fox, RMR
Official Reporter

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1 THE COURT: Mr. Pfisterer, what I propose to do
2 is take each one separately starting with Criminal 63-00-02
3 which is the Pennsylvania case.

4 MR. PFISTERER: Yes, ma'am.

5 THE COURT: Then take each one separately and
6 address the problems therein. Go ahead.

7 MR. PFISTERER: Your Honor, I don't believe there
8 were any objections of substance to 063. There was concern
9 about the statements made by Shiquan Smith about the threat.
10 They don't affect the Guidelines. He is unavailable in the
11 sense that he --

12 THE COURT: It might affect it, but it wouldn't
13 affect his ultimate sentencing.

14 MR. PERRY: That's correct.

15 THE COURT: Okay. Let's start with that.
16 Mr. Price, you have reviewed the presentence report in
17 Criminal Number 00-63-02 which is the interstate travel in
18 aid of racketeering; correct?

19 THE DEFENDANT: Yes.

20 THE COURT: And your counsel has filed an
21 objection to paragraphs 19 and 29 concerning the
22 characterization of your treatment of Shiquan Smith.
23 Actually, the resolution of that would be moot because it
24 would not affect your sentencing.

25 So I would ask your counsel to at this point

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1 address this particular charge.

2 MR. PERRY: May it please the Court, good
3 morning.

4 THE COURT: Good morning, sir.

5 MR. PERRY: Mr. Price has from the time that we
6 received the initial presentence report and then the amended
7 presentence report denied that he threatened Shiquan Smith.

8 If you read this presentence report carefully,
9 Mr. Price admits to many things, drug dealing for many
10 years, guns, talking to other witnesses, etcetera. He has
11 always adamantly maintained to me and through me to the
12 Court that he did not threaten Shiquan Smith.

13 I have explained to him that we will object to
14 that characterization in the report because of what he said
15 to me, but I also explained to him several times that it
16 really doesn't matter in the end because he will undoubtedly
17 receive the statutory maximum ten years, five years and a
18 consecutive five years for these two counts. And he
19 understands that based upon his record.

20 I can put him on the record if Your Honor
21 desires, and he can deny that he did so. But as his lawyer,
22 I have told him that whether he did or he didn't at this
23 point, it doesn't make any difference in this case because
24 he will get the 120 months we believe.

25 Does that suffice?

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1 THE COURT: Even if I would accept your version,
2 it would not affect your sentence. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. That is fine. Do you
5 have anything further?

6 MR. PERRY: On this case, no, we do not, Your
7 Honor.

8 THE COURT: Mr. Price, address anything you have
9 to say about this offense, not the other one which we will
10 take up afterwards.

11 MR. PERRY: Do you have anything to say about
12 this particular case? My suspicion is you do not. You want
13 to address the gun charge and the sentencing on that because
14 what we have talked about because you know you are going to
15 get a five and five.

16 Do you wish to address Your Honor about this
17 case?

18 THE DEFENDANT: What?

19 MR. PERRY: Anything about the two interstate
20 trafficking cases?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Mr. Pfisterer?

23 MR. PFISTERER: Nothing, Your Honor.

24 THE COURT: With regard to this criminal number
25 AND NOW this second day of February, the year 2001, pursuant

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1 to the Sentencing Reform Act of 1984, it is the judgment of
2 the Court that the Defendant Romeal Price is hereby
3 committed to the custody of the Bureau of Prisons to be
4 imprisoned for a term of 120 months. This term consists of
5 terms of 60 months on each of Counts One and Two to be
6 served consecutively.

7 The Court finds that the Defendant has some
8 ability to pay a fine. Accordingly, it is further ordered
9 that the Defendant pay to the United States the sum of
10 \$1,000.00 consisting of a fine of \$400.00 and a special
11 assessment of \$100.00 on each count.

12 The fine and special assessment shall be paid
13 through the Clerk of Court, are due in full immediately and
14 are payable during the period of incarceration with any
15 balance to be paid within two years of release from custody.

16 Upon release from imprisonment, the Defendant
17 shall be placed on supervised release for a term of three
18 years.

19 Within 72 hours of release from the custody of
20 the Bureau of Prisons, the Defendant shall report in person
21 to the Probation Office in the District to which the
22 Defendant is released.

23 While on supervised release, the Defendant shall
24 comply with the standard conditions that have been adopted
25 by this Court and with the following additional condition:

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1 The Defendant shall pay any balance of the fine imposed by
2 this judgment to which remains unpaid at the commencement of
3 the term of supervised release in minimum monthly
4 installments of no less than \$50.00.

5 The Defendant shall submit to one drug test
6 within 15 days of release from custody and at least two
7 periodic drug tests thereafter.

8 The following statement of reasons is placed on
9 the record for the sentence that has been imposed: The
10 Court adopts the factual findings and the guideline
11 application in the presentence report. The fine is below
12 the guideline range because of the Defendant's inability to
13 pay. The sentence is within the guideline range. That
14 range does not exceed 24 months, and the Court finds no
15 reason to depart from the sentence called for by the
16 application of the guidelines.

17 Now, Mr. Price, with regard to this particular
18 sentence, you can appeal your conviction if you believe that
19 your guilty plea was somehow unlawful or involuntary or that
20 there was some other fundamental defect in these proceedings
21 that was not waived by your guilty plea.

22 You also have a statutory right to appeal your
23 sentence under certain circumstances, particularly if you
24 think your sentence is contrary to law. However, a
25 Defendant may waive these rights as part of a plea

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1 agreement.

2 You have entered into a plea agreement which
3 waives some or all of your rights to appeal the sentence
4 itself. Such waivers are generally enforceable. But if you
5 believe that your waiver is unenforceable, you can present
6 that theory to the Court of Appeals.

7 You have the right to appeal within ten days of
8 this date. You are represented by Court-appointed --

9 MR. PERRY: Yes, Your Honor.

10 THE COURT: Your current counsel will continue to
11 represent you on appeal should you wish to take an appeal.
12 You may also request the Clerk of Court to prepare and file
13 a notice of appeal on your behalf.

14 Were you going to say something?

15 MR. PERRY: No, Your Honor.

16 THE COURT: We are going to the other sentencing.
17 Let's address Criminal 00-216-01, which is the drug count.
18 There were several objections made in that regard.

19 The first one is paragraph twelve which was a two
20 level enhancement because of the fact that the firearm had
21 an obliterated serial number.

22 Do you wish to argue on that?

23 MR. PERRY: May it please the court, before we go
24 into the specifics, may I just say something generally about
25 this, or would you rather focus in on the exact objections

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1 first?

2 THE COURT: Well, there are one, two, three
3 objections. The second one is rather complex. The third
4 one will be resolved.

5 MR. PERRY: We may not need to get to the
6 objections.

7 THE COURT: Then go ahead.

8 MR. PERRY: Just in good faith to Mr. Price, I
9 would just say on the record that legally, I made two
10 mistakes in representing him in this case, both of which I
11 think -- one of which has been rectified.

12 The multiple count enhancement -- originally
13 these two cases were put together. There was a multiple
14 count enhancement. Mr. Vought then divided the two cases
15 which is what we asked for with two sets of guidelines.

16 THE COURT: That is what I instructed to do.

17 MR. PERRY: My first mistake has been remedied.
18 The second mistake was believing the two counts merged in
19 this case for sentencing purposes. Instead of a 15-year
20 statutory maximum, which quite frankly I think Mr. Vought is
21 correct, they do not merge legally, but Mr. Price was under
22 the belief that they merged because of me, because of
23 Mr. Pfisterer, because of what was said in court I believe.

24 THE COURT: Maybe this will resolve the whole
25 thing. I don't intend to give him that fifteen, but there

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1 will be a consecutive sentence so you are aware of that.

2 He will be given the benefit of the doubt to the
3 ten year as opposed to the fifteen.

4 MR. PERRY: Yes, Your Honor.

5 THE COURT: That will be resolved because of the
6 fact that he was under that belief, I will honor that
7 belief.

8 MR. PERRY: May I explain that to him?

9 THE COURT: Before you do that, however, there is
10 also the additional problem that this will run consecutive,
11 not concurrent, just so you are aware of that.

12 MR. PERRY: The next question would be would you,
13 Your Honor, allow an argument on running a portion of it
14 concurrent and a portion consecutive if that is allowed?
15 Because now I am in a dilemma with Mr. Price in that these
16 two cases were not reliant on each other.

17 In other words, the sole reason why I recommended
18 to him that he Rule 20 these charges down here was under the
19 assumption that the Assistant United States Attorney from
20 the Southern District of New York was going to recommend a
21 concurrent sentence. Mr. Pfisterer was going to adopt that
22 recommendation.

23 I remember vividly a discussion in the Marshal's
24 holding cell between Mr. Pfisterer and myself, Assistant
25 Public Defender Lori Ulrich, Gerald Price, Mr. Price's

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1 brother, Mr. Price. And we all talked about this
2 recommendation. And in good faith to him again, I said if
3 they are going to recommend a concurrent sentence and
4 Mr. Pfisterer is going to recommend a concurrent sentence,
5 this is in your best interest. Let's get these done.

6 Now I am in an ethical dilemma because if Your
7 Honor intends to impose a consecutive sentence, I feel like
8 I haven't done him justice by recommending this. It is an
9 awkward position as a lawyer to be in.

10 This gentleman is certainly no saint. He
11 certainly has a lengthy record. If you read him on paper,
12 it is one thing. But as the lawyer, I feel that I would
13 never have made that recommendation had I anticipated a
14 consecutive sentence.

15 I would have said go back to New York, face your
16 medicine there. Take your ten years here. If they are
17 going to run it concurrent, the most you can get at this
18 point is 15 years. And now he is looking at 20 years. And
19 that as a lawyer is difficult for me to swallow.

20 On the other hand --

21 THE COURT: On the other hand, what you have been
22 able to gain for him by your plea bargaining with the
23 government, he was facing thirty to life, so he is getting a
24 20-year benefit already. Go ahead. I am sorry. I
25 interrupted.

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1 MR. PERRY: You are right. On the other hand, we
2 have talked about this watch what you ask for. We asked for
3 separate guidelines. In my motion to withdraw, we said he
4 believed that his statutory maximum was ten years on these
5 gun charge.

6 He knew -- at least I think he knew that Your
7 Honor had the option to run them concurrent or consecutive.

8 THE COURT: Right. He understood it was an
9 option.

10 MR. PERRY: I believe so, and he is nodding yes.
11 I believe he did. Again, you have to put it in the context
12 of the discussion in the Marshal's with all the attorneys.
13 Because remember the purpose of that meeting. The purpose
14 was Mr. Price did not believe that his brother Gerald would
15 ever testify against him.

16 I suggested to Mr. Pfisterer with Assistant
17 Federal Public Defender Ulrich let's get them together. As
18 soon as Mr. Price was aware that his brother was in fact
19 going to testify against him, he said I will plead guilty to
20 the two interstate travel counts. I agree with you. My
21 brother will.

22 Then we said wait a minute. What about these gun
23 charges from New York? Mr. Pfisterer made the call and came
24 back in and said -- for the record, Mr. Pfisterer has been
25 fabulous. He has been honest and forthright in this case as

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1 he always is with me. My issue is not with him.

2 But it is with my representation and my things
3 that I said to Mr. Price that I said just get it done.
4 Let's get it done in one swoop. You don't have to worry
5 about what happens in New York then. Get it done here.

6 But I made that recommendation with the
7 understanding that a concurrent recommendation would be
8 made. Even though it was up to Your Honor, the whole
9 substance, the whole gist of that conversation was that it
10 seemed more likely than not that that was what would happen.
11 I don't know if Mr. Pfisterer agrees with that.

12 MR. PFISTERER: Your Honor, if I could just
13 briefly. I appreciate Mr. Perry's concern because he is an
14 extremely conscientious attorney on behalf of whatever
15 client he is representing.

16 His concern before the Court though is just that,
17 his concerns. That certainly was the factual discussion. I
18 have no dispute at all with that. But the Court in taking
19 Mr. Price's plea informed him -- and I think it was clear on
20 the record -- that the decision even though we would
21 recommend concurrent time, and that that was the defense's
22 hope, that it was up to Your Honor to decide ultimately
23 whether it would be concurrent or consecutive. The maximum
24 punishment he could receive in his own words was 20 years.

25 He believed an additional ten was possible on top

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1 of what he was hoping for, but he understood that when he
2 pled.

3 So the fact that Your Honor has come out at this
4 early stage in the presentence report and indicated where
5 you intend to go doesn't change the fact that the Court has
6 the authority to go either way on that issue, but has chosen
7 to go consecutive.

8 I am not sure that creates -- I understand it
9 creates concern on the Defendant's behalf, but I don't
10 believe that there is anything for the Court to do to
11 address that other than make the decision that the Court
12 would have made in any event.

13 MR. PERRY: Perhaps -- I am sorry.

14 (The Judge confers with Mr. Kosheba.)

15 THE COURT: We might be able to resolve this. Do
16 you have anything further?

17 MR. PERRY: No. Well, he would like to address
18 --

19 THE COURT: I know. I understand that.

20 MR. PERRY: Anything else on my points, no.

21 THE COURT: So what I need to do is whether or
22 not to resolve the objections that are currently before me.
23 Quite frankly, the number one objection, the presentence
24 report is correct in its application of 2K2.1(a)7 and the
25 application of 12 2K2.1.

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1 On objection number two concerning what you
2 considered to be double counting, I followed the process
3 through the guidelines, and I am satisfied that that is
4 appropriately calculated. It is not double counting.

5 And number three, which is the application of
6 maximum penalty of 15 years, I think I can resolve that.

7 MR. PERRY: Yes, Your Honor.

8 THE COURT: Mr. Price, do you wish to address the
9 Court on this offense?

10 THE DEFENDANT: On both of them?

11 THE COURT: I want just this offense. You had a
12 chance to speak on the Pennsylvania offense. I just want
13 your comments on the New York offense.

14 MR. PERRY: Tell Her Honor why you are in this
15 position.

16 THE DEFENDANT: I am in this position because all
17 my life, I have been bad. I have been around bad influences
18 all my life. That is all I know basically.

19 I really don't -- I really never had a job or
20 never tried to do none of that, you know. Hopefully in the
21 future, I will get a chance to try. Up to like right now, I
22 still don't know. That is all I know is to do bad things,
23 to sell drugs and carry guns. Hopefully when I do go to
24 jail or whatever, I can learn.

25 MR. PERRY: May I make a few points too, Your

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1 Honor?

2 THE COURT: Hold on a minute. Go ahead.

3 MR. PERRY: May it please the Court, just some
4 final few thoughts. He is 23 years of age, and he does have
5 three children. He has come from a broken home.

6 You can see in the presentence report it says
7 that he lived on his own in a life of crime is an
8 understatement certainly. I would suggest that federal
9 prison is the appropriate place for him in the short term,
10 and he can get the help hopefully that he needs, and maybe
11 some education and maybe some training there.

12 I will remind Your Honor that in the psychiatric,
13 psychological evaluation that his diagnosis was he had
14 limited intellectual abilities. He has been completely
15 reliant on me to guide him through this process. I have
16 acknowledged my blunders, both of which I think have now
17 been remedied.

18 I would also say, too, on his behalf if you look
19 at his presentence report that he was very candid in his
20 admissions of his involvements in these cases and did not
21 hide anything we submit to Mr. Vought.

22 Lastly, I hope Your Honor will consider the
23 sentences imposed for his co-defendants. Most importantly,
24 his brother Gerald who received 168 months of imprisonment.
25 And if you asked Mr. Vought -- and we have had a number of

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1 conversations; he is not here today. If you asked the
2 agents, I think they consider Romcal Price the leader of
3 this outfit.

4 But that doesn't make sense because he is the
5 brother with the limited intellectual abilities. He is the
6 one having difficulty reading and writing.

7 THE COURT: But he is the mean one. Go ahead.

8 MR. PERRY: I found him grumpy at times. He was
9 a little unhappy with me at times. But in any event --

10 THE COURT: Go ahead.

11 MR. PERRY: I just hope Your Honor will consider
12 some parity in these sentences. I would argue that a
13 partial concurrent, partial consecutive sentence may be the
14 middle ground which is the appropriate resolution in this
15 case.

16 My gut feeling is that Mr. Pfisterer would not
17 have an objection to a sentence like that, nor would
18 Mr. Price based on our conversations. And all I am asking
19 is that he be treated fairly based on all of the facts and
20 circumstances. That is all we have.

21 THE COURT: Mr. Pfisterer, I am anxious to hear
22 your position.

23 MR. PFISTERER: Your Honor, my position is what
24 we previously stated on the record. And that is when we
25 consulted on this case with the Southern District of New

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1 York, they indicated that if Mr. Price had come to New York
2 and pled, that they would have recommended -- as long as he
3 agreed to plead straight up, they would recommend a
4 concurrent sentence.

5 So I have to believe they expected that he would
6 get somewhere around an additional five years out of this,
7 but that their recommendation would be concurrent. And
8 therefore, that is my recommendation today.

9 THE COURT: You have had so many breaks in this
10 case, I guess I will give you one more.

11 AND NOW this second day of February, the year
12 2001, the Defendant appearing in court for purposes of
13 sentencing, pursuant to the Sentencing Reform Act of 1984,
14 it is the judgment of the Court that the Defendant Romeal
15 Price is hereby committed to the custody of the Bureau of
16 Prisons to be imprisoned for a term of 120 months.

17 This term consists of 120 months on Count One and
18 60 months on Count Two to be served concurrently with each
19 other. This sentence is to commence upon service of five
20 years of the sentence imposed in Pennsylvania Case Number
21 1:CR-00-063-02.

22 The Court finds that the Defendant has some
23 ability to pay a fine. Accordingly, it is further ordered
24 that the Defendant pay to the United States the sum of
25 \$1,000.00 consisting of a fine of \$400.00 and a special

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1 assessment of \$100.00 on each count. The fine and special
2 assessment shall be paid through the Clerk of Court, are due
3 in full immediately and are payable during the period of
4 incarceration with any balance to be paid within two years
5 of release from custody.

6 Upon release from imprisonment, the Defendant
7 shall be placed on supervised release for a term of three
8 years.

9 Within 72 hours of release from the custody of
10 the Bureau of Prisons, the Defendant shall report in person
11 to the Probation Office in the District to which the
12 Defendant is released.

13 While on supervised release, the Defendant shall
14 comply with the standard conditions that have been adopted
15 by this Court and with the following additional condition:
16 The Defendant shall pay any balance of the fine imposed by
17 this judgment which remains unpaid at the commencement of
18 the term of supervised release in minimum monthly
19 installments of no less than \$50.00.

20 The Defendant shall submit to one drug test
21 within 15 days of release from custody and at least two
22 periodic drug tests thereafter.

23 The following statement of reasons is placed on
24 the record for the sentence that has been imposed: The
25 Court adopts the factual findings and the guideline

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1 application in the presentence report. The fine is below
2 the guideline range because of the Defendant's inability to
3 pay.

4 The sentence departs from the guideline range for
5 the following reasons: The Defendant pled guilty believing
6 that his combined maximum statutory exposure was ten years
7 and not fifteen.

8 In fairness to the Defendant, the Court departs
9 under United States Sentencing Guideline section 5K2.0 on
10 the basis that the Sentencing Commission did not contemplate
11 this unusual situation.

12 Now, again, Mr. Price, you can appeal your
13 conviction on this charge if you believe that your guilty
14 plea was somehow unlawful, or involuntary, or that there was
15 some other fundamental defect in these proceedings that was
16 not waived by your guilty plea.

17 You also have a statutory right to appeal your
18 sentence under certain circumstances, particularly if you
19 think the sentence is contrary to law. You have ten days
20 from this day in which to file a notice of appeal.

21 Mr. Perry will continue to represent you without cost should
22 you desire to take an appeal.

23 The Clerk of Court can also prepare and file a
24 notice of appeal on your behalf.

25 Anything you need to do pursuant to the plea

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1 agreement, Mr. Pfisterer?

2 MR. PFISTERER: Your Honor, I believe with
3 respect to Romeal Price, the original indictment, we move to
4 dismiss that.

5 THE COURT: It is so ordered. Looks like it is
6 going to be fifteen.

7 MR. PERRY: Your Honor's intention was an
8 aggregate sentence of 15 years; is that correct?

9 THE COURT: Yes. The sentence will begin to run
10 after he serves five years on the Pennsylvania which means
11 he will have an additional five years after the second.

12 MR. PERRY: Thank you. Go luck.

13 THE CLERK: Court is adjourned.

14 (Whereupon, the proceedings were concluded.)
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2 I hereby certify that the proceedings and
3 evidence are contained fully and accurately in the notes
4 taken by me on the trial of the above cause, and that this
5 copy is a correct transcript of the same.

6
7 Vicki L. Fox, RMR

8 Vicki L. Fox, RMR

9 Official Reporter
10
11

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